Since then I have not received a single cent in respect of that account." There was no entry of part payment in the book of accounts Exhibit P1 A and P1 B.

In reply counsel for the respondent referred to Order 28 rule 1 of the Rules of the Supreme Court, 1957, which reads as follows:—

"The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

and quoted the case of *Loutfi* v. *C. Czarnikew, Ltd.*[1] At page 824 Sellers J. states:

"I think it would be only in conformity with well-established rules that I should allow that amendment because it is simply setting out in the pleadings that which has emerged in the course of the case as an issue between the parties."

If one reads the headnotes on page 823 one will notice that it differs from the present case in that in the latter case the question of part payment was never mentioned in the pleadings and in the evidence at the trial. It is well to state here the headnotes in full:—

"Unless there is very good ground and strong justification for so doing, the court should be reluctant to grant amendments of the pleadings after the close of the case but before judgment, even though it has been indicated in the course of the hearing that some amendment might be asked for.

Such an amendment may be allowed: (i) where the matter involved has been raised in the course of the trial and counsel has addressed the court on it, since it will be merely incorporating in the pleadings that which has emerged in the course of the case as an issue between the parties; (ii) where the fact the subject of the amendment has been referred to by counsel in opening and evidence about it has been given, since there has been sufficient indication in the course of the trial and in the evidence that it is a matter in controversy and the amendment will enable the court to arrive at the view, if it thinks fit, that what is pleaded is a correct interpretation of the facts."

In *Weldon* v. *Neal*[2], it was held that a plaintiff will not be allowed to amend by setting up fresh claims in respect of causes of action which since the issue of the writ have become barred by the Statute of Limitations. Lord Esher M.R. says at page 395:

"If an amendment were allowed setting up a cause of action, which, if the writ were issued in respect thereof at the date of the amendment, would be barred by the Statute of Limitations, it would be allowing the plaintiff to take advantage of her former writ to defeat the statute and taking away an existing right from the defendant, a proceeding which, as a general rule, would be, in my opinion, improper and unjust. Under very peculiar circumstances the Court might perhaps have power to allow such an amendment, but certainly as a general rule it will not do so."

Lopes L.J. kho was of the same opinion states on page 396:

"But here the amending paragraphs set up causes of action which were not in the original claim and which are now barred by the Statute of Limitations. The effect of allowing those amendments would be to take away from the defendant the defence under that statute and therefore unjustly to prejudice the defendant.

It is true that Order 28 rule 1 gives the Judge discretion to amend but in my view it must be exercised judicially. In the circumstances, I allowed the appeal with costs.

Hill J. A. and **Ismail Khan J.** concurred

Appeal allowed.

Solicitors:—*Shook Lin & Bok; Chung & Huang.*

SINNIAH SOKKAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Gill J.) June 4, 1963]

[K.L. — Criminal Appeal No. 13 of 1963]

Citizenship—Federation of Malaya Constitution, Schedule 2, s.16—Citizenship (Registration Authority) Rules, 1957—Application for citizenship—Applicant knowingly making false statement as to date of birth—Application drawn up by petition writer—Inducing registration authority to grant certificate—Ingredients of offence—Meaning of "knowingly make a false statement".

The appellant who was resident in the Federation on *Merdeka Day* made an application for registration as a citizen of the Federation of Malaya. His date of birth was stated in the application as 1910. The application was approved and a certificate issued on February 20, 1958. On May 31, 1961 the appellant wrote to the Registration Officer enclosing his Citizenship Certificate and identity card requesting for his date of birth on the Citizenship Certificate to be amended to May 10, 1915. Evidence was adduced by the prosecution at the trial to show that the first identity card issued to the appellant showed his date of birth as 1910 but that the date of birth on the third identity card issued to him in 1960 was altered to May 10, 1915. The appellant's evidence in reply was that he came to Malaya in 1929 and that he could not read or understand English or Tamil although he could sign his name in Tamil. His application for an identity card and for Federal Citizenship were prepared by a clerk and a petition writer respectively and that the latter had used his identity card to complete the application form for Citizenship. Later on obtaining his birth certificate from India he had his date on his identity card altered to May 10, 1915 and he made an application for alteration of his date of birth on his Citizenship Certificate. The appellant was convicted by a Magistrate's Court for an offence under section 16 of the Second Schedule of the Federal Constitution. On appeal the main question for decision was whether the appellant knowingly made a false statement in relation to his date of birth with the intention of inducing the registration authority to grant him a Citizenship Certificate.

Held: (1) the evidence of the appellant was not challenged in any way and there was nothing inherently improbable in his story to suggest that it was not true;

(2) although the appellant was conscious of the statement which he made in his application he genuinely believed that the date disclosed therein was his correct date of birth and he did not know at the date of his application that his statement was false. As the learned

Magistrate failed to consider this point the conviction should be set aside.

Case referred to:—

(1) *Public Prosecutor* v. *Ng Chong* [1946] M.L.J. 68.

MAGISTRATE'S CRIMINAL APPEAL.

M. S. Naidu for the appellant.

K. C. I. Reddy for the respondent.

Gill J. (delivering oral judgment): The appellant in this case was tried in the Magistrate's Court at Kuala Lumpur on the following charge:

"That you on 29th January, 1958 at the Office of the Registrar of Citizens, Selangor, Kuala Lumpur, in the State of Selangor, knowingly made a false statement, to wit, that you were born in India in the year 1910 and that your Identity Card SL.032480 showed that you were born on the 10th of May, 1915, with a view to inducing the registration authority to grant application under Part III of the Constitution, and that you have thereby committed an offence punishable under section 16 of the Second Schedule to the Federal Constitution."

He was convicted of the offence set out in the charge and sentenced to a fine of $70. Against that conviction and sentence he has now appealed.

The case for the prosecution briefly was that on the 29th January, 1958 the appellant as a person resident in the Federation on Merdeka Day made an application for registration as a citizen of the Federation of Malaya. The application was made on Form D.1 set out in the Schedule to the Citizenship (Registration Authority) Rules 1957 as required by Rule 8 of the said Rules. Under Item 7 of the Form his date of birth was stated to be 1910. The application was approved by Mr. S. Sinniah (P.W.1), an Assistant Registrar of Citizens, on 20th February, 1958, and a certificate was issued on the same day under the hand of one Mr. V. Vallipuram (P.W.2), another Assistant Registrar of Citizens.

Evidence was adduced at the trial to show that on the first Identity Card issued to the appellant some time in 1948 his date of birth was shown as 1910, but that on production by the appellant of certain certificates from the Indian High Commission in Malaya, the Employees' Provident Fund and the Kuala Lumpur Municipality, the date of birth on the third Identity Card issued to him on 3rd February, 1960 was altered to 10th May, 1915. On 31st May, 1961, the appellant addressed a letter to the Registration Officer, Petaling Jaya, enclosing his Citizenship Certificate and his Identity Card and asking for his date of birth on the Citizenship Certificate to be amended to 10th May, 1915. Apparently a clerk made an alteration on his Citizenship Certificate accordingly, under the impression that the request was in order, but subsequently, on discovering that the request was improper, the alteration was cancelled. Criminal proceedings were then commenced against the appellant for making a false statement about his age.

The appellant's evidence in answer to the charge was that he came to Malaya in 1929 and has been working in the Lake Gardens, Kuala Lumpur, ever since. He does not read or understand English or Tamil, but he can sign his name in Tamil. His application for an Identity Card in 1948 was prepared by a clerk in the Registration Department who filled in his approximate date of birth in the Identity Card. His application for a Federal Citizenship Certificate in 1958 was filled in by a petition writer by reference to his Identity Card. He delivered his application for Federal Citizenship at the Citizenship Office at Brickfields Road, Kuala Lumpur and signed it in the presence of a clerk. When the certificate was handed to him about a month later a clerk asked him some questions regarding his age. He replied that he was born in India but did not know the actual date, whereupon the clerk suggested that he should write to India for documents regarding his age. He therefore wrote to his uncle in India who in due course sent him a letter together with his Birth Certificate. After receiving his Birth Certificate from India, he had his date of birth on his Identity Card altered to 10th May, 1915, of his own accord and subsequently made an application for an alteration of his date of birth on his Citizenship Certificate. This evidence of the accused was not challenged in any way, and I can find nothing inherently improbable in his story to suggest that it was not true.

Several grounds of appeal have been urged on behalf of the appellant against his conviction and sentence, but to my mind the main question to be considered is whether he knowingly made a false statement in relation to his date of birth with the intention of inducing the registration authority to grant him a Citizenship Certificate. In the case of *Public Prosecutor* v. *Ng Chong*[1] the Court of Criminal Appeal held that in a prosecution of any person under section 116(1) of the Road Traffic Enactment, 1937, for "making any statement which to his knowledge is false" for the purpose of obtaining the grant of any licence to him, it must not only be proved that the statement was false but also that it was consciously made and known to be false.

I do not think there is any practical difference between the words "knowingly make a false statement" and the words "make any statement which to his knowledge is false." In the present case the charge was that the appellant knowingly made a false statement. I do

not think it can be said that the appellant was not conscious of the statement which he made in his application. It is true that the application was filled in by a petition writer, but it must be assumed that the petition writer filled in such particulars as were given to him by the appellant. I believe, therefore, that it would be correct to say that the appellant did a conscious act when he obtained the requisite form of application, another conscious act when he got some other man to fill it up for him and yet another conscious act when he affixed his signature on the application at the Registration Office. He must have known, even if his own story is to be believed *in toto*, that the form which he had signed contained a number of statements of some sort or other having something to do with his application for a Citizenship Certificate, and he also knew that the form which he signed was to be presented to the proper registration authority. To that extent it would be true to say that the Magistrate was right in coming to the conclusion that the appellant was aware of the statement with which he was charged.

Apart from showing that the statement was consciously made, the prosecution had to prove that the appellant knew that the statement which he had made with regard to his date of birth was false. This, to my mind, they failed to prove. In any event, there was the evidence of the appellant that he got his correct date of birth long after the Certificate of Citizenship was issued to him. He was not asked when he first made the application to produce any document in relation to his date of birth. It was only at the suggestion of a clerk at the Registration Office that he took the trouble to procure for himself some documentary evidence from India about his birth. In the circumstances I think there can be no doubt that on the date of his application the appellant genuinely believed that the date of his birth as shown in the Identity Card was his correct date of birth. If that was so, I do not see how it can be argued that the appellant knew on the date of his application that his statement was false. This is a point which in my opinion the learned Magistrate failed to consider, and it is for this reason that I think that the conviction of the appellant should be set aside. The appeal is allowed, the conviction and sentence of the accused quashed and the fine, if paid, must be refunded to the appellant.

Appeal allowed.

Solicitors:—*Braddell & Ramani; Kaher Singh & Karam.*

GOH LIAN HOCK & ANOR. v. REGINA

[A.Cr.J. (Wee Chong Jin C.J.) June 12, 1963]

[Singapore — Magistrate's Appeal Nos. 38 & 39 of 1962]

Penal Code, ss. 392, 394, 397—Charge of voluntarily causing hurt when committing robbery—Charge reduced to one of robbery—Evidence adduced at trial that one of the appellants was armed with knife—Raising of offence from one under s.394 to that under s.397—Criminal Procedure Code (Cap. 132).

Criminal Procedure—Jurisdiction in respect of "offence"—Criminal Procedure Code (Cap. 132), ss. 10 & 177.

The appellants were charged with having committed an offence under section 394 of the Penal Code. At the close of the prosecution case the charge against the appellants was amended to one under section 392 and after their defence was called they were found guilty on the amended charge. The main ground of appeal was that the learned District Judge had no jurisdiction to proceed with the trial after the admission of evidence that one of the appellants was armed with a knife in that such evidence added an element which raised the offence from one under section 394 to one under section 397 of the Penal Code, an offence which the District Court had no jurisdiction to try under section 177 of the Criminal Procedure Code.

Held: although evidence was adduced in the District Court to support a charge under section 397, that fact alone in no way affected the jurisdiction of the District Judge in proceeding to deal with the charge before him. *Bapoo* v. *R.*[1] followed.

Case referred to:—

(1) *Bapoo* v. *Rex* [1935] M.L.J. 18.

MAGISTRATE'S CRIMINAL APPEAL.

David Marshall for the appellant.

Tan Wee Kian (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: In this appeal both appellants are appealing against their conviction by the First Criminal District Judge on an amended charge of robbery under section 392 of the Penal Code.

At the commencement of the trial the appellants were charged together with another person with having committed an offence under section 394, the charge being as follows:—

"That you, (1) Goh Liang Hock (2) Lee Kiap Seng (3) Au Hing Loong, on or about the 4th day of December 1961 at about 23.30 hrs. at Bartley Road, Singapore committed robbery of a wrist watch and a gold ring worth $100 in the possession of one Chan Yam Yeong and at the time of committing the said robbery one of you voluntarily caused hurt to the said Chan Yam Yeong and you have thereby committed an offence under section 394, Cap. 119".

At the close of the case for the prosecution the other accused person was acquitted and discharged but the charge against the appellants was amended to one of robbery under section 392 and they were called upon to make their